

254-12-BZ

APPLICANT – Patrick W. Jones, P.C., for Salmar Properties, LLC, owner.

SUBJECT – Application August 20, 2013 – Variance (§72-21) to permit Use Group 10A uses on the first and second floors of an existing eight-story building, contrary to use regulations (§42-00). M3-1 zoning district.

PREMISES AFFECTED – 850 Third Avenue aka 509/519 Second Avenue, bounded by Third Avenue, unmapped 30th Street, Second Avenue, and unmapped 31st Street, Block 671, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson and Commissioner Montanez....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 19, 2012 acting on Department of Buildings Application No. 3200499607, reads in pertinent part:

Proposed Use Group 10A in M3-1 for first and second floor is contrary to ZR 42-12; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M3-1 zoning district, the conversion of portions of the first and second floors of an existing eight-story manufacturing building to retail use with more than 10,000 sq. ft. of floor area per establishment (Use Group 10A), contrary to ZR § 42-12; and

WHEREAS, a public hearing was held on this application on October 22, 2013, after due notice by publication in the *City Record*, with a continued hearing on November 19, 2013, and then to decision on January 14, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Brooklyn, recommends approval of the application; and

WHEREAS, United States Congresswoman Nydia M. Velazquez, United States Congressman Michael Grimm, and Councilperson Sara Gonzalez provided testimony in support of the application; and

WHEREAS, the subject site is the entire block bounded by Second Avenue, 30th Street, Third Avenue, and 31st Street; the site is located within an M3-1 zoning district; and

WHEREAS, the site has 200.33 feet of frontage along both Second Avenue and Third Avenue, 700 feet

of frontage along both 30th Street and 31st Street, and 140,231 sq. ft. of lot area; and

WHEREAS, the site is occupied by an eight-story manufacturing building with approximately 1,117,166.8 sq. ft. of floor area (8.0 FAR); and

WHEREAS, the applicant states that the building was constructed by the United States Government in approximately 1918 and was used as a storage facility for the United States Navy from 1918 until around 2000, when it became vacant; ownership of the building was then transferred to the New York City Economic Development Corporation, which issued a request for proposals to redevelop the building; the applicant's response to the RFP was selected and it took ownership of the building in 2011; and

WHEREAS, the applicant notes that it purchased the building subject to deed restrictions regarding the redevelopment of the building, including: development shall be "primarily for light industrial uses," "excluding passive warehouse and/or storage," and shall include "complete roof replacement or restoration," "façade restoration," installation of "utilities, mechanical and life safety systems distributed throughout the entire building" and "at least one bank of elevators," and may include "up to 15 percent of rentable floor area . . . for retail uses"; in addition, according to the deed, the building must be made to comply with the 2008 Construction Codes prior to re-occupancy; and

WHEREAS, the applicant proposes to convert the building from storage throughout to retail (Use Group 10A) on portions of the first and second floors, and manufacturing (Use Group 17) on portions of the first and second floors and all of the third through eighth floors; the retail use will occupy 62,614.8 sq. ft. of floor area on the first floor and 104,972 sq. ft. of floor area on the second floor, for a total retail floor area of 167,586.8 sq. ft., which represents 15 percent of the total floor area of the building (1,117,166.8 sq. ft.); the manufacturing use will occupy the remaining 949,580 sq. ft. throughout the building; finally, the applicant proposes to reserve no fewer than 368 parking spaces and up to 16 loading berths for the proposed uses on the block directly south of the subject site (Block 675, Lot 10), which is separated from the site by unmapped 31st Street; and

WHEREAS, because, per ZR § 42-12, Use Group 10A retail uses are limited to 10,000 sq. ft. of floor area per establishment within the subject M3-1 district, the applicant seeks a use variance; and

WHEREAS, the applicant states that the following are the site's unique physical conditions, which create an unnecessary hardship in developing the site in conformance with applicable zoning district regulations: the existing building's obsolete characteristics, including its column spacing, archaic layout, and absence of modern building systems; the historic significance of the building; and the site's limited street access; and

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WHEREAS, the applicant states that the building is obsolete for its original purpose; as noted above, the building was constructed in 1918 by the federal government and used by the United States Navy as a storage facility until 2000; as such, it was built to carry substantial loads on every floor (it contains 331 structural columns per floor, with columns located approximately every 20 feet) and to be able to efficiently catalog, distribute, and retrieve stored materials; and

WHEREAS, the applicant asserts that the ubiquitous columns hamper the use of the building for as-of-right uses; specifically, for manufacturers, the columns form narrow maneuvering lanes that inhibit the use of trucks, forklifts, pallet jacks, and hand jacks, making the space inefficient and difficult to market; for retailers, the column condition interferes with the presentation of merchandise and reduces the amount of usable floorspace, making the 10,000 sq. ft. limitation particularly burdensome; and

WHEREAS, the applicant represents that the building's systems are outmoded and in disrepair, and that, aside from its structural elements, the majority of the building is not salvageable and must be replaced and rebuilt in accordance with modern, local standards; and

WHEREAS, the applicant asserts that the building's vacancy for the past 13 years supports the conclusion that it is no longer useful as a storage facility (and, indeed, not permitted to be used for storage under the deed restrictions); and

WHEREAS, similarly, although the majority of the building (85 percent of the floor area) is proposed to be light manufacturing, the tenant spaces for such use are not ideal for typical modern manufacturers, which desire ground-level, unimpeded floorplates for their materials and equipment; as such, the light manufacturing must be offered at discounted rents and offset with the higher rents associated with retail use; and

WHEREAS, the applicant states that renovating the 96-year-old building poses unique challenges due to the building's size and the deed requirement to comply with the 2008 Construction Codes; and

WHEREAS, the applicant notes that the building is uniquely large in comparison to neighboring buildings; in particular, the applicant represents that of the 35 sites on the 13 nearest blocks, there are only eight buildings that have more than 100,000 sq. ft. of floor area and only one of the eight, the federal detention center located at 830 Third Avenue, is comparable in size (902,000 sq. ft.) to the subject building, which has over one million square feet of floor area; and

WHEREAS, the applicant states that, unlike other large existing buildings in the study area, only the subject building must be made to comply with the 2008 Construction Codes in order to be reoccupied; typically, buildings of this size from this era would be able to utilize earlier versions of the New York City Building

Code to make changes to the building; accordingly, this building's renovations will be more extensive and more expensive than similar buildings in the neighborhood; and

WHEREAS, as to the historic character of the building, the applicant states that it is considered eligible to be listed in the National Register of Historic Places due to its historic use and appearance, and that its restoration and preservation are restrictions of the deed; as such, the applicant must undertake extensive work including: reconstruction of portions of the façade to match historic conditions; door and window replacement to historic-replacement standards; installation of non-permanent ramps (so as to preserve historic appearances), and installation of historically appropriate lighting; and

WHEREAS, to support its claim of hardship, the applicant submitted a detailed analysis of the costs of achieving code compliance and historic preservation of the building; and

WHEREAS, similarly, the applicant states that the limited street access of the building is a unique condition that creates a practical difficulty operating an as-of-right use; and

WHEREAS, specifically, the applicant represents that the building fronts on two unmapped streets (30th Street and 31st Street), one of which (30th Street) is built out but under the control of the federal detention facility center and not open to the public and the other of which (31st Street) is located entirely within Block 675, Lot 10; therefore, the applicant asserts that neither 30th Street, nor 31st Street may be used to access the site as-of-right; and

WHEREAS, the applicant also states that the site does not have any existing access points (curb cut or building entrances) along Second Avenue and its existing façade cannot be altered (due to deed restrictions) to reorient the building to have its main frontage on Second Avenue; thus, the building and the site are generally accessible only via Third Avenue in an as-of-right scenario; and

WHEREAS, as a result, a small retail use (one with less than 10,000 sq. ft. of floor area, per ZR § 42-12) with frontage solely on Second Avenue, 30th Street or 31st Street would be largely invisible to its potential customers and difficult to access, making such a space less attractive to tenants and therefore less valuable; and

WHEREAS, the applicant asserts that such limited access to the public street is unique in the surrounding area, and it supported this assertion with an analysis of the ten large buildings (100,000 sq. ft. or more of floor area) within 1,500 feet of the site and their access points; based on the analysis, only the site has one access point; of the other nine sites, one site has two access points, three sites have three access points, three sites have four access points, one site has five access points, and one site has six access points; and

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WHEREAS, based upon the above, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformance with the use regulations; and

WHEREAS, the applicant assessed the financial feasibility of four scenarios: (1) an as-of-right manufacturing and retail building with retail use limited to 10,000 sq. ft. per establishment; (2) an as-of-right manufacturing building with no retail use; (3) a lesser variance in which only the first floor is permitted to exceed the 10,000 sq.-ft.-per-retail establishment limitation; and (4) the proposal; and

WHEREAS, the applicant concluded that only the proposal would result in a sufficient return; and

WHEREAS, at hearing, the Board directed the applicant to clarify the following: (1) its justification for the mortgage rate assumed in the financial analysis; and (2) the infeasibility of constructing a series of small retail spaces; and

WHEREAS, in response, the applicant's consultant indicated that the assumed mortgage rate is based on a 2013 survey of interest rates and is within the range for industrial rents, though on the higher end to reflect the risks of the project, which include the size of the site and its location, and the condition of the existing building and its required renovations; and

WHEREAS, as for demonstrating the impracticality of a series of small retail spaces, the applicant provided plans showing that breaking up the retail space will adversely affect retail signage, visibility, accessibility, which the applicant states are critical business elements for retailers; and

WHEREAS, based upon its review of the record, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning requirements will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed use will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant represents that the immediate area, which is west of Third Avenue and the Gowanus Expressway, is characterized by a predominance of medium-density manufacturing buildings; the applicant notes that the subject area is distinct from the area east of the Gowanus Expressway, where uses are more diverse and include low- to medium-density residential, commercial, and manufacturing uses; and

WHEREAS, as for the immediately adjacent sites, the applicant states that, as noted above, there is a federal detention facility directly north of the site on

Block 667, Lot 1, and a large parking lot directly south of the site on Block 675, Lot 10, which will provide loading berths and parking for the retail and manufacturing uses at the site; and

WHEREAS, the applicant states that west of the site across Second Avenue is a waterfront superblock (Block 662, Lot 1) of low-rise commercial buildings, parking and storage areas owned and operated by the Department of Small Business Services; east of the site across the Gowanus Expressway and Third Avenue, is Block 672, which includes an array of low-rise manufacturing, commercial, and residential buildings; and

WHEREAS, as to bulk, the applicant states that although the 8.0 FAR of the building is well in excess of the maximum permitted FAR in the subject M3-1 district (2.0 FAR), the building was constructed by the federal government (which is not subject to the Zoning Resolution) and, more importantly, has existed at the sight for nearly 100 years; further, the applicant states that neither the envelope, nor the floor area of the building will change under the proposal; and

WHEREAS, the applicant notes that the site lies within an Industrial Business Zone and that its proposed use of 85 percent of the building's floor area for manufacturing uses is consistent with that designation; likewise, the applicant asserts that the proposed retail uses will complement (rather than duplicate) local commercial uses and add up to 1,300 jobs to the local economy; and

WHEREAS, at hearing, the Board directed the applicant to clarify how the parking and loading facilities will be preserved given that the facilities are located on a separate zoning lot; and

WHEREAS, in response, the applicant provided a copy of a recorded restrictive declaration, which requires the owner of Block 675, Lot 10 (and its successors and assigns) to provide for the site no fewer than 368 parking spaces and up to 16 loading berths; and

WHEREAS, accordingly, the Board finds that this action will neither alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the practical difficulties and unnecessary hardships associated with the site result from the peculiarities of the existing building on the lot and the site's limited street access; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, finally, the applicant asserts and the Board agrees that the current proposal is the minimum

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necessary to offset the hardship associated with the uniqueness of the site and to afford the owner relief; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.2 and 617.6 of 6NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 13BSA021K, dated January 10, 2014; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential air quality impacts; and

WHEREAS, DEP reviewed the applicant's January 2014 mobile sources air quality analyses and determined that no significant adverse air quality impacts from the proposed project are anticipated; and

WHEREAS, the New York City Department of Transportation's ("DOT") Division of Traffic and Planning reviewed the project for potential traffic impacts; and

WHEREAS, the applicant identified in the 2013 EAS and Traffic Study proposed traffic improvement measures which would be implemented as part of the proposed action at the following intersections:

39th Street (E-W) and Second Avenue (N-S):

During the weekday midday peak hour, shift three seconds of green time from the northbound/southbound phase to the eastbound/westbound phase; during the weekday PM peak hour shift four seconds of green time from the westbound phase (Gowanus Expressway Exit Ramp) and allocate two seconds to the northbound/southbound phase (Second Avenue) and two seconds to the eastbound/westbound phase; and during the Saturday midday peak hour shift four seconds of green time from the westbound phase (Gowanus Expressway Exit Ramp) to the eastbound/westbound phase;

33rd Street (E-W) and Fourth Avenue (N-S):

During the Saturday midday peak hour shift one second of green time from the northbound/southbound phase to the eastbound/westbound phase;

20th Street (E-W) and Fourth Avenue (N-S):

During the Saturday midday peak hour shift two seconds of green time from the eastbound/westbound phase to the northbound/westbound phase;

33rd Street (E-W) and Third Avenue: Restripe eastbound 33rd Street between northbound and southbound Third Avenue as two 15-foot travel lanes – one through lane and one left-turn lane; and

WHEREAS, DOT reviewed these measures and determined they were reasonable and feasible; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an M3-1 zoning district, the conversion of portions of the first and second floors of an existing eight-story manufacturing building to retail use with more than 10,000 sq. ft. of floor area per establishment (Use Group 10A), contrary to ZR § 42-12, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 6, 2013" – (8) sheets; and *on further condition*:

THAT the retail use will be limited to 62,614.8 sq. ft. of floor area on the first floor and 104,972 sq. ft. of floor area on the second floor, for a total retail floor area of 167,586.8 sq. ft.;

THAT loading berths and a minimum of 368 parking spaces will be provided on Block 675, Lot 10;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans will be considered approved only for the portions related to the specific relief granted; and

THAT this approval is subject to DOT investigating the need for implementing the proposed

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improvements as described above or similar measures when the building is completed;

THAT the applicant will notify DOT six months prior to the opening of the proposed building;

THAT substantial construction will be completed in accordance with ZR § 72-23;

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, January 14, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, January 14, 2014.
Printed in Bulletin Nos. 1-3, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

